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"UNEQUAL JUSTICE UNDER LAW"

by

Kristen Campbell

King Scholar Seminar

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INTRODUCTION

Racial profiling is the law enforcement practice of targeting people based on their race in the belief that certain ethnic groups are more likely to commit crimes.¹ The injustice of racial profiling by police has not gone unnoticed. It is becoming increasingly apparent that "Lady Justice" is not blind. In fact, when it comes to skin color, her vision is a perfect 20/20. Today, in America, the color of your skin makes you a suspect. Although law enforcement officials generally disagree,² being a minority makes you more likely to be watched, stopped, questioned, searched and ultimately arrested or imprisoned.

Racial profiling is most commonly evidenced as an officer's decision to stop a minority driver, often driving an expensive car, for a traffic violation, which would be routinely ignored when committed by other drivers.³ In fact, stopping black drivers, just to see what an officer can find, has

become so common that the practice has been given its own name. This phenomena has been termed "Driving While Black."⁴

Racial profiling, combined with the Supreme Courts ruling upholding pretextual stops, has created an invidious climate for all minority motorists. A pretextual stop flows from an officers belief that a criminal activity may be "afoot" in the absence of "articulable suspicion."⁵ A pretextual stop based on racial profiles stems from the belief that stopping minority motorists will lead to evidence of crime more often than by stopping other motorists. A gross generalization can then occur associating minorities with drugs. Thus, the hypothesis that the majority of drug dealers are minorities becomes a self-fulfilling prophecy.

Originally, racial profiling was based on the premise that minorities commit most drug offenses.⁶ This analysis will present data refuting any truth to this premise. However, the stereotype becomes a self-fulfilling prophecy secondary to the fact that when police look for drugs primarily among minorities, they find a disproportionate number of them with contraband.⁷ This perception creates a profile that leads to the grossly unequal traffic stops of minority drivers and the persecution of innocent citizens based purely on the color of their skin. It would be interesting to note what might occur if law enforcement officials decided to stop a majority of Caucasian motorists, instead of minorities. Due to the sheer volume of white motorists being stopped the odds of finding contraband, or

other law violations greater than that of the traffic stop itself, would increase. If all ethnic groups were detained by police in equal numbers the self fulfilling prophecy would cease to exist, as would the negative connotations and stereotypes among both law enforcement officials and the general public.

Moreover, not only do the numbers prove there is disparity in the number of minority motorists being stopped, also becoming increasingly apparent is the difference in the experiences of minorities who are pulled over. Based on hearings across the country, the National Association for the Advancement of Colored People concluded that police officers routinely rely on race as an indicator of guilt and degree of danger and that harassment and verbal abuse are widespread. For example, while chokeholds or "face down on the pavement" methods of searching are not implemented, with any frequency, on the white middle class, Los Angeles police officers concede that these methods are routine treatment of black motorists.⁸ These experiences tend to be a source of great fear, humiliation and subjugation felt by minorities. Essentially, racial profiling results in innocent people being stopped for oftentimes fabricated or highly technical violations, and then intimidated, interrogated and searched in violation of their individual rights.

Are we reverting to the days when criminal jurisprudence in reality represented racial jurisprudence? This paper will explore the phenomena

of racial profiling in America, its impact on the criminal justice and legal systems and its profound social costs.

HISTORY

The use and abuse of racial profiling by the criminal justice system has been traced to the United State's "War on Drugs", evidencing a broader societal issue.⁹ Drugs have been pinpointed as one of America's worst enemies. The "War on Drugs" has also been a highly politicized issue. Unfortunately, this "War" has been waged primarily on minority members of society. For example, examine the disparity in sentencing between crack and powder cocaine. These represent different forms of the same substance. The only difference between the two is that minorities use crack cocaine most frequently. Synonymously, Congressionally mandated sentencing is 100 times higher for crack offenses than for powder offenses.¹⁰

Furthermore, evidence concludes that the "War on Drugs" has shifted law enforcement concern from traffic safety to "drug busting."¹¹ For example, one set of data in Florida has revealed that of nearly 1500 traffic stops, only nine motorists were issued tickets.¹² Law enforcement officers acknowledge that the way to attain notoriety and incentives is to obtain drug arrests; in fact many departments offer generous rewards for such arrests.¹³

Even though five times more whites use drugs as minorities, the war on drugs has targeted minority members of society.¹⁴ For example, in 1985 the Florida Department of Safety issued "The Common Characteristics of Drug Carriers" in response to President Reagan's "Task Force on Drugs."¹⁵ Included among the characteristics for patrol officers to be suspicious of were "drivers wearing a lot of gold," or who did not "fit the vehicle," and "ethnic groups associated with the drug trade."¹⁶ New York, Chicago, Los Angeles and Atlanta followed suit, targeting poor minority urban neighborhoods.¹⁷

There have been simultaneous allegations in Texas and New Jersey of racism within police departments. Minority as well as white officers making allegations of internal racism and racial targeting have initiated lawsuits.¹⁸ For example, New Jersey's state police superintendent was fired after stating that "cocaine and marijuana traffickers were most likely to be members of minority groups."¹⁹

DATA

Accounts of racial profiling are running rampant. Statistical evidence portrays an irrefutable pattern of systematic racially discriminatory traffic stops. Not only are racial minorities stopped in higher numbers than whites, they are also searched disproportionately. Furthermore, while Hispanics constitute less than 8% of the population in Illinois, they

represent 30% of motor stops for discretionary offense (e.g. driving 1-4 miles per hour over the speed limit).²⁰ Similarly, African Americans make up 15% of the population; yet represent nearly 25% of the traffic searches.

Philadelphia has evidenced a similar trend. For example, in two given weeks, 85.9 and 71.7% of traffic stops were of minorities.²¹ In the state of Maryland, a survey indicated that it was possible in 97% of automobile stops for the officer to identify the race of the occupant. The same survey showed that 93% of drivers were in violation of some sort of traffic law and were eligible to be stopped. While 75% of motorists were white, only 19% of those motorists searched were white.²² Over 80% of the stops were members of a racial minority group. These numbers can not be ignored.

Also, it has been determined that nearly 80% of vehicles searched on the New Jersey turnpike belong to minority drivers.²³ The collection of data clearly indicates that racial profiling increases arbitrary searches and seizures where officers have the discretion to select among minor infractions. In Florida, a review of tapes of 1100 police stops showed that while African Americans and Hispanics made up only 5% of the drivers on a particular section of Interstate-95, they comprised over 70% of those stopped.²⁴

Furthermore, the justification for racial profiling, that blacks and Hispanics are more involved with drugs, also appears to be entirely void of merit. For example, according to government reports, 80% of the United

States cocaine users are white.²⁵ In fact, "among black youth, a demographic group often portrayed as most likely to be involved with drugs, use of all illicit substances has actually been consistently lower than among white youths for twenty years running."²⁶ However, it goes back to the attitudes of officials, such as Carl Williams, the former head of the New Jersey State Police, who firmly believes that "mostly minorities" are responsible for the drug problem.²⁷ Unfortunately, his philosophy has been ingrained into the lower ranking officers, thus making them act accordingly via positive reinforcement for their blatantly racist stereotypes. As a result, the self-fulfilling fallacy prophecy continues as more blacks/minorities are stopped, thus more are arrested, thus more are prosecuted, thus providing continuing justification for the use of racial profiles and race based pretextual stops.

PRESENT: CASES

The Fourth Amendments history clearly demonstrates its purpose as protecting society against the unlimited discretion of the official to search whoever and whenever he chooses, for evidence of a crime.²⁸ Furthermore, the backbone of our legal system is the concept that laws are of "general applicability," to be applied even handedly. Being singled out, based on the color of ones skin, cannot be spread across the entire population, thus demonstrating that the Fourth Amendment must be

interpreted to ensure equal treatment of racial minorities. Racial profiling, in essence, reflects the antithesis of these concepts.

Given the high degree of highway regulation, nearly all motorists commit some mild traffic offense on any given trip. When we think of traffic infractions, we think of moving violations (i.e. speeding, etc...). But, traffic codes regulate all other aspects of driving related activity. For instance, they regulate everything from equipment to cosmetics. Almost all traffic codes also contain the catchall violations such as "imprudent" or "unreasonable" driving, or other similarly broad language.²⁹ Allowing an officer standard-less discretion as to how, when and who he may stop and search. This is in contradiction to the theme of the Fourth Amendment. Moreover, the role of the Court in the Fourth Amendment is simply to establish an evenhanded application of the law, and not to legislate. Presumably, society would not elect to allow the police unlimited discretion or the power to perform unreasonable searches. The Court however, has done just that.³⁰

For example, in *Whren v. United States*, the United States Supreme Court upheld pretextual traffic stops by allowing law enforcement officers to use even the most minor of traffic infractions, real or alleged, as an excuse to stop and search a vehicle and its occupants.³¹ In *Whren*, police officers used traffic violations as a pretext to stop a car and investigate possible drug offenses. One of the traffic violations cited was "not giving

full time and attention to the operation of the vehicle."³² Beyond the technical violations, the officer had neither probable cause, nor reasonable suspicion to stop the driver.³³

The Supreme Court ruling in *Whren* permits an officer to stop an automobile whenever he/she observes an offense, even those that are so minor a reasonable officer would not have stopped the vehicle. The Court ruled that any traffic violation provides an officer with probable cause to stop a vehicle.³⁴ Furthermore, once a vehicle is stopped, the officer may order the occupants out of the car and request consent to search the car, necessarily creating a coercive environment.³⁵ Justice Scalia insisted that "the constitutional reasonableness of a search does not depend on the actual motivations of the individual officers involved."³⁶ Consequently, after *Whren*, if the police target a driver, for instance, by a racial profile, all that is required of them in order to institute a search is some pretext for a stop. The police may follow a vehicle until the driver makes some inconsequential error or technical violation. This is especially troubling given the high degree of traffic regulation; it is virtually impossible to drive in total compliance with every regulation. While *Whren* allows a police officer to pretextually stop any driver, it has been shown that the police have used this power to stop blacks and other minorities in vastly disproportionate numbers.

Since *Whren*, the Supreme Court has proceeded to increase police power with regard to traffic stops. In *Ohio v. Robinette*, the Supreme Court held that an occupant of a car need not be informed of his right to refuse to consent to a search.³⁷ This was decided despite the fact that most people believe that they are legally in the police officers custody, as long as the officer continues to question them, and that a reasonable person does not feel free to refuse an officer's request or to walk away from them.³⁸

In *Maryland v. Wilson*, the Supreme Court negated the probable cause requirement for searching an occupant of a motor vehicle. This holding gave police officers the power to order a passenger out of a stopped car, whether there was any reasonable basis for suspicion or not.³⁹ In this decision, Justice Rehnquist acknowledged that "there is probable cause to believe the driver has committed a minor vehicular offense, but there is no such reason to stop or detain passengers." However he continued, "the additional intrusion to the passenger is minimal."⁴⁰

Similarly, in *Wyoming v. Houghton*, the Court determined that "after the lawful arrest of a driver, the police can search the closed purse of a passenger even though they had nothing to do with the alleged infraction ... or criminal activity."⁴¹

These recent Supreme Court holdings show little concern for the insidious damage done when a minority has good reason to suspect that

they are routinely stopped based on the color of their skin. At the same time racial profiling was proliferating, the courts have been restricting Fourth Amendment protection. A striking factor in all of these decisions, is the lack of dissent in the decisions, especially since the purpose of the Fourth Amendment is to "safeguard the privacy and security of individuals against arbitrary invasions by government officials."⁴² These four cases produced four dissenting opinions total.⁴³ This is seen to those who are familiar with the Supreme Courts rulings on the Fourth Amendments in the past.

The racial insensitivity apparent in these decisions has shed light another Fourth Amendment breakdown. That is the Courts justification though reliance on the fiction of "consensual encounters" with the police.⁴⁴ Basically, in order to do a search without reasonable suspicion, the police officer must gain consent. However, anyone who has ever been stopped understands the oxymoron inherent in such a concept. First of all, most people do not know it is their Constitutionally protected right to refuse consent to a search. Moreover, every encounter with a gun toting uniformed officer is likely to elicit feelings of nervousness, powerlessness and at least some degree of intimidation. In fact, law enforcement officers are skilled in what they refer to as "sweet talk," which consists of methods of garnering consent to searches through threatening conversation.⁴⁵ Plain and simple, if their goal is getting a layperson to consent to a search,

they will most likely succeed. Of course, this is necessary to an extent, but the key factors in this dilemma revolve around circumstances and consistency. It must be at least considered by the Court that most people do not feel free to leave. Ignoring this aspect makes it impossible to define "reasonableness," which is the premise the Court consistently relies on with respect to the Fourth Amendment.

PERSONAL/SOCIETAL COSTS

Many commentators argue that the practice of racial profiling and related pretextual stops have had a profoundly dangerous impact on our "free society...especially one dedicated to the equal treatment of all citizens."⁴⁶ Police have argued that stopping African Americans is not racist, but just "good police work." They cite the number of African Americans under the control of the criminal justice system. And sometimes, they find drugs... and then ask "Why let technicalities get in the way of catching bad guys?"⁴⁷ Obviously, this logic is severely flawed, not to mention this rationale of targeting all African Americans because some are criminals is reprehensible. "In essence, this thinking predicts that all blacks, as a group, share a general propensity to commit crimes...Therefore, having black skin becomes enough...for law enforcement..." to invade a person.⁴⁸ Under this logic, all black citizens become probable criminals simply by leaving their homes. The injustice of

targeting an entire group of persons as criminals, because some are, cannot be condoned. This would in essence make all races, cultures, and ethnic groups criminals because they are all represented in the American penal system.

Racial profiling has invidious impact in many aspects of our society. Race based traffic stops, specifically, is an attack on an individuals dignity. The act of driving, which the majority of us take for granted, can turn into a dangerous experience for minorities. Some minorities attest that they avoid certain places all together, such as white suburbs, out of fear.⁴⁹ They know that such stops can easily turn into dangerous situations.

Further, interviews prove that race based stops have a strong impact on the minorities involved.⁵⁰ Far from constituting only an "inconvenience," such action has been proven to aggravate open wounds as a result of years of feelings of injustice, which results in a deepening distrust of the criminal justice system.⁵¹ Commentators agree that the practice of racial profiling and related pretextual traffic stops can have a profoundly perilous impact on our free society, especially one alleging dedication to the equal treatment of citizens.

You will be hard pressed to find any African American in this country who has not encountered some form of a pretextual stop.⁵² The pretextual stop directed toward the black community shows no regard for age, social status, education level, or income. Included are a few examples of the

gross injustice secondary to racial profiling and the use of pretextual traffic stops.

Three years ago, the African American President of the National Bar Association was stopped at the Washington International Airport on his way to a convention. Even after identifying himself with authorized identification and a business card he was searched and detained for one half of an hour in full view of the other passengers.⁵³

Similarly, Karen Brun, an African American, relays her experience after being pulled over from a group of cars traveling at the same rate of speed. She was asked to produce her license, which she did. The police officer called for back up and proceeded to handcuff and arrest her based on a prior parking ticket. Multiple squad cars arrived. Her car was searched and she was then placed in a squad car, terrified.⁵⁴

James, an African American advertising executive has conceded to what he considers to be a fact: that being routinely stopped by police is an unchangeable part of being black.⁵⁵ James relayed accounts of driving through "white" neighborhoods and being followed by police. He insists that even driving with extra care and caution makes no difference. He still encounters traffic stops and accusation of "weaving" or some other machination.⁵⁶

Not even those in the public eye are immune. For instance, Wesley Snipes, Will Smith, Blair Underwood, Marcus Allen, Edwin Moses and Johnnie Cochran articulate similar occurrences.⁵⁷

Unquestionably, most disturbing is the effect of racial profiling on the legitimacy of the criminal justice and legal systems. One would hope that in the current times of American democracy and increased education, that racist beliefs and actions would quickly become extinct. Furthermore, one would believe that the justice system, touting its impartial and unbiased structure would set the tone by creating and enforcing laws that would allow for the true pursuit of happiness. Unequal law enforcement destroys society's faith in the system. See jury nullification as a protest to such legally sanctioned prejudice. Racially targeted stops, justifiably, cause a deep cynicism among minorities about the validity of our system of justice. This also leads to a related skepticism with police. Most blacks and Hispanics admit to feeling waves of terror wash over them when they encounter any form of law enforcement official.⁵⁸ A good number of minorities experience the pain of instructing their children how to behave when confronted by police, knowing that routine traffic stops can lead to physical confrontations.⁵⁹ Christopher Darden, the African American prosecutor in the O.J. Simpson case articulates that he "learned the rules of the game years before...Don't move. Don't turn around. Don't give a rookie any excuse to shoot you."⁶⁰ The police and courts are in place to

protect society, yet ironically, the opposite appears to hold true in many instances for minorities in our country.

SUGGESTIONS

Admittedly, law enforcement officers may be between a rock and a hard place in today's society. Lurid accounts of drugs and violence are so common place today that they hardly elicit a response from the lay citizen. However, the reaction is quite the contrary on police beats nationwide. Police officers risk life and limb at every maneuver on today's weapon wielding streets. Furthermore, they are under tremendous pressure from all angles to remedy the situation. Thus, they argue that discretion is imperative to their function.

While it is unarguable that fighting crime should be of utmost importance, it must be done without compromising freedom, equality and basic justice. Ending the use of pretextual stops appears to be one of the simpler methods of curbing the "Driving While Black" phenomena. For instance, according to the American Civil Liberties Union, virtually all of the complaints (and every recent case) in this area involve the use of pretextual traffic stops.⁶¹ The first step in this critical endeavor will be the reigning in of officer discretion. Admittedly, however, eliminating this

discretion does not preclude an officer's superior from imposing discriminatory standards. However, eliminating the individual discretion will require political accountability by policy makers as to their policies to discriminate racially in enforcing the law, as it is unlikely that a public would support such a regime.⁶²

Claims of "Driving While Black" must be litigated. As we have seen, elected officials are very hesitant to restrict police power. It appears rational that the Courts determine sensible restrictions. However, contrary to the suggestion of recent Supreme Court Justices, Equal Protection claims are probably not the most effective avenue for attacking racial profiling or related pretextual stops. Equal Protection analysis tends to be somewhat inattentive to factual contexts of allegations of unfairness.⁶³ The Supreme Court construes the Equal Protection Clause as permitting almost any government action other than those based on outright hostility, thus provides no protection of unconscious bias. Similarly, proving outright bias is a near impossible feat.⁶⁴ Also, it would require the showing of disparate impact via statistical evidence. The Court has expressed its near contempt for statistical data as proof of disparate impact.⁶⁵ Thus, with the aid of *Whren*, any officer can invent a racially neutral explanation for his action. On a practical note, the majority of those affected by the combination of racial profiling and pretextual stops lack the resources to further race based review under Equal Protection.

Essentially, some sort of Fourth Amendment protection must be provided in opposition to pretextual traffic stops. While some argue the cases brought under the Fourth Amendment would duplicate those under Equal Protection, there is nothing preventing one from bringing claims based on equality under more than one Constitutional provision. Moreover, since the Fourth Amendment specifically contemplates searches and seizures, the issue may be most logically and effectively argued based on the Fourth Amendment. The Fourth Amendment does provide, after all, that an individual's liberty in terms of searches and seizures must be weighed against the states interest in the intrusion.⁶⁶ The states interest in stopping, detaining, searching and protecting society are far from compelling when the driver is charged with only a minor technical traffic violation, especially when one considers the societal cost involved.

This is not to suggest that the Fourth Amendment should include an exception for minorities, but that the exceptional circumstances, such as racial profiling, must be considered in the interpretation of the Fourth Amendment.⁶⁷ For instance, David Sklansky suggested that a "Fourth Amendment jurisprudence more alert to minority interests and experiences probably would find room for a rule disallowing pretextual detentions for traffic violations..."⁶⁸

Another reason for the importance of litigation is the simple truth that many of those in positions of legislative power happen to be white, and have not experienced the effects of pretextual stops or racial profiling. By virtue of the fact that a "discrete and insular minority" of the population are affected by these processes, the majority has reduced incentive to act aggressively proactive enough to institute immediate change.⁶⁹ "When there is prejudice toward a discrete and insular minority, the legislature is likely to ignore or undervalue the interests of that minority, and the resulting legislation may not reflect an accurate aggregation of everyone's individual interests."⁷⁰ However, the potential role of the federal and state legislatures must not be overlooked.

Another obvious action that must be taken is further data collection. If law enforcement has nothing to hide, why are they so resistant to such action? Mandatory data collection could be accomplished via the passage of the Traffic Stops Statistics Act, an act introduced into Congress by Michigan Representative John Conyers. This act would require the collection of data on each traffic stop. In accordance with this act, the Attorney General would then compile and study the data. Congress could then take informed and measured steps to address the problem and appropriately oversee police behavior. Furthermore, the Attorney General must take proactive measures to destroy racial profiles in the federally funded "War on Drug" programs.

It is also important to try and remedy this problem before it has a chance to spread in our youth through education. Today's youth, sadly, have the stereotypes towards minorities reinforced on a regular basis from the media via movies, Black/Asian/Hispanic character always portrayed as the drug addict with a propensity for crime, and from the self fulfilling prophecy arrests displayed on the five o'clock news. If the cycle can be broken and the end of racial profiling occurs, then children will be able to make decisions on their own without big brothers input. Our criminal justice students, at the college level, also must be keyed in to what the truth consists of before they are integrated with the older generations of law enforcement agents who currently practice racial profiling. This will also help to break the vicious cycle, profile-stop-arrest-repeat, before it has a chance to harm the honor and inelegance of minorities, and allow for the justice system to act with out prejudice.

The next logical step would be to pass legislation dealing with the problem at the federal and even more importantly, state levels. While it cannot be left to individual departments to remedy the situation, everyone must step it up and work together to remedy the problem.

A Miranda-type rule should at least be contemplated, in which an officer would be required to inform a motorist of his right to refuse a suspicion-less search.⁷¹ The Miranda decision, recently upheld, adamantly created the right to knowledge of constitutional rights in order to uphold the Fifth

Amendments right to silence. The Court found Miranda warnings necessary to protect the public from official coercion.⁷² Miranda has illustrated how far knowledge alone can go in preventing official abuse. Though the "Driving While Black" phenomena implicates the Fourth Amendment, and its prohibition on arbitrary searches and seizures, instead of the Fifth, the issue appears to fit directly within the Miranda framework and analysis. In both instances, a citizen is confronted with an authority figure, in a coercive environment marked by the potential for official overreaching. Officers, while making a traffic stop are more often than not acutely aware of the coercive power they possess. Furthermore, psychological studies indicate that even absent fear or coercion, there is a reflexive impulse to obey an authority figure.⁷³ See the famous Stanley Milgrim experiment pertaining to authoritarian personality. This being the case, most officers know that the majority of motorists will consent to a search, believing that they are in police custody as long as questioning continues, creating an incentive for them to stop motorists without suspicion.⁷⁴ A motorist knowing his rights will provide a disincentive for law enforcement officials to make such pretextual stops since the motorist is in a position to deny the officer the gain he expects from his suspicionless search.⁷⁵

A recent case has specifically addressed the topic of racial profiling and pretextual stops. The federal government sued the State of New Jersey

and the New Jersey Police for targeting racial minorities on the New Jersey Turnpike. Statistics revealed that while only 35% of drivers were black, they represented 74% of motorists pulled over and searched. This suit was based on the Due Process and Equal Protection Clauses of the Fourteenth Amendment. A settlement was ultimately reached, providing the following:

1. Unless specific suspects are sought and are known to have a certain race or ethnic origin, troopers may not use race or ethnic or national origin in deciding whether to stop an automobile;
2. The New Jersey State Police must implement a protocol that establishes criteria to be followed by state troopers in determining which motorists will be stopped;
3. Trooper may request consent to search an automobile only if they have reasonable suspicion that a search will reveal evidence of a crime; and
4. A consensual search may proceed only after the driver signs a consent form that informs the motorist of their right to withhold consent.

This decree appears to provide at least a model for eliminating racial profiling.

Many commentators also argue for suppression. They cite that existing remedies are insufficient to protect racial minorities from racial profiling and selective targeting.⁷⁶ The rationale behind this argument is articulated:

"Selecting traffic offenders based on race, and requesting consent to

search primarily of minorities, runs afoul of the Fourth Amendment. This practice, therefore, can not be attacked with remedies less powerful than those provided for every other Fourth Amendment violation...".⁷⁷ This of course, being suppression. In fact, one authority has suggested the implementation of a suppression remedy for violation of the Fourteenth Amendment Equal Protection Clause.

CONCLUSION

While pretextual traffic stops apprehend some people who are guilty, is the high societal cost, derogation of our legal system and the undermining of public confidence in law enforcement worth it? The answer is obvious, therefore we must end the use of racial profiling. We should all act in compliance with the "golden rule" i.e. treat others as you want them to treat you. Unfortunately, the golden rule as is real as "true democracy" and the Easter Bunny. It cannot exist because of human nature, which is full of conflict, struggle, ignorance, and self-righteousness. There will always be a void in society that needs to be filled in which some individuals, via luck of the sperm, get branded the unfavorable name of scapegoat. The finger must be pointed at some one because most humans cannot face the repercussions of their own actions. The idea that white people do not consume illicit drugs, or that all whites drive carefully abiding by all legally

enforced driving codes is absurd. Unfortunately, via positive reinforcement some individuals actually grow to believe the prior statement. What the bottom line states, in bold capital letters, is that we live in a melting pot powder keg. The longer we continue with stereotyping and racial profiling the shorter the fuse becomes. One of the greatest things about being a human being is that we have the capability to change the future. Through education and the legal system we have the power to make America a conducive environment for the pursuit of happiness. We can break down the problem of ignorance, which leads to fear, which leads to strife. The proper education of our youth as well as the members of the law enforcement is key. In conjunction with an education movement attorneys need to develop laws that will help protect the citizens from prejudice, as well as striking down the outdated ones.

Five score years ago, a great American, in whose symbolic shadow we stand signed the Emancipation Proclamation. This momentous decree came as a great beacon light of hope to millions of Negro slaves who had been seared in the flames of withering injustice. It came as a joyous daybreak to end the long night of captivity.

One hundred years later, the Negro lives on a lonely island of poverty in the midst of a vast ocean of material prosperity. One hundred years later, the Negro is still languishing in the corners of American society and finds himself an exile in his own land. So we have come here today to dramatize an appalling condition.--- segments of the "I have a Dream" speech by *Martin Luther King, Jr.*

How much have we progressed since the above speech was given in 1963? It is now 37 years later and we still have a long way to go before the dream can finally become reality.

¹ See Rebecca Porter, *Skin Deep: Minorities Seek Relief from Racial Profiling*, 35 Trial 13, 14 (1999).

² See *id.* at 14.

³ See Wesley MacNeil Oliver, *With an Evil Eye and an Unequal Hand: Pretextual Stops and Doctrinal Remedies to Racial Profiling*, 74 Tulane L. Rev. 1409, 1410 (2000).

⁴ See David A. Harris, *"Driving While Black" and all Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops*, 87 J. of Crim. L. and Criminology 544, 546 (1997).

⁵ See Wesley MacNeil Oliver, *With an Evil Eye and an Unequal Hand: Pretextual Stops and Doctrinal Remedies to Racial Profiling*, 74 Tulane L. Rev. 1409, 1414 (2000).

⁶ See David A. Harris, *Driving While Black: Racial Profiling on Our Nations Highways*, American Civil Liberties Union, Special Report, (June, 1999).

⁷ See *id.*

⁸ See David A. Sklansky, *Traffic Stops, Minority Motorists and the Future of the Fourth Amendment*, 1997 Sup. Ct. Rev. 271 (1997).

⁹ See David A. Harris, *Driving While Black: Racial Profiling on Our Nations Highways*, American Civil Liberties Union, Special Report, (June, 1999).

¹⁰ See Lisa Water, *Eradicating Racial Stereotyping from Terry Stops: The Case for an Equal Protection Exclusionary Rule*, 71 U. Colo. L. Rev. 255, 264 (2000).

¹¹ See *id.* at 259.

¹² See *id.* at 260.

¹³ See *id.*

¹⁴ See David A. Harris, *Driving While Black: Racial Profiling on Our Nations Highways*, American Civil Liberties Union, Special Report, (June, 1999).

¹⁵ See *id.* at 5.

¹⁶ See *id.*

¹⁷ See *id.*

¹⁸ See Lisa Water, *Eradicating Racial Stereotyping from Terry Stops: The Case for an Equal Protection Exclusionary Rule*, 71 U. Colo. L. Rev. 255, 260 (2000).

¹⁹ See *id.*

²⁰ See David A. Harris, *Driving While Black: Racial Profiling on Our Nations Highways*, American Civil Liberties Union, Special Report, (June, 1999).

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- ²¹ See *id.* at 8.
- ²² See *id.*
- ²³ www.state.nj.us/lps/intm_419.pdf.
- ²⁴ See Rebecca Porter, *Skin Deep: Minorities Seek Relief from Racial Profiling*, 35 *Trial* 13, 14 (1999).
- ²⁵ See generally *id.*
- ²⁶ See David A. Harris, *The Stories, Statistics, and the Law: Why "Driving While Black" Matters*, 84 *Minn. L. Rev.* 265, 296 (1999).
- ²⁷ See *id.* at 296.
- ²⁸ See Wesley MacNeil Oliver, *With an Evil Eye and an Unequal Hand: Pretextual Stops and Doctrinal Remedies to Racial Profiling*, 74 *Tulane L. Rev.* 1409, 1411 (2000).
- ²⁹ See David A. Harris, *"Driving While Black" and all Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops*, 87 *J. of Crim. L. and Criminology* 544, 558 (1997).
- ³⁰ See Wesley MacNeil Oliver, *With an Evil Eye and an Unequal Hand: Pretextual Stops and Doctrinal Remedies to Racial Profiling*, 74 *Tulane L. Rev.* 1410, 1412 (2000).
- ³¹ See *Whren v. United States*, 517 U.S. 806 (1996).
- ³² See *id.*
- ³³ See David A. Harris, *"Driving While Black" and all Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops*, 87 *J. of Crim. L. and Criminology* 544 (1997).
- ³⁴ See *id.* at 548.
- ³⁵ See *Pennsylvania v. Mimms*, 434 U.S. 106 (1977).
- ³⁶ See *Whren v. United States*, 517 U.S. 806 (1996).
- ³⁷ See *Ohio v. Robinette*, 519 U.S. 33 (1996).
- ³⁸ See David A. Sklansky, *Traffic Stops, Minority Motorists and the Future of the Fourth Amendment*, 1997 *Sup. Ct. Rev.* 271, 279 (1997).
- ³⁹ See *Maryland v. Wilson*, 519 U.S. 408 (1997).
- ⁴⁰ See *id.*
- ⁴¹ See *Wyoming v. Houghton*.
- ⁴² See David A. Sklansky, *Traffic Stops, Minority Motorists and the Future of the Fourth Amendment*, 1997 *Sup. Ct. Rev.* 271, 292 (1997).
- ⁴³ See *id.* at 282.
- ⁴⁴ See generally *id.* at 318.
- ⁴⁵ See David A. Harris, *"Driving While Black" and all Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops*, 87 *J. of Crim. L. and Criminology* 544, 574 (1997).
- ⁴⁶ See *id.* at 545.
- ⁴⁷ See *id.* at 571.
- ⁴⁸ See *id.* at 572.

⁴⁹ See David A. Harris, *Driving While Black: Racial Profiling on Our Nations Highways*, American Civil Liberties Union, Special Report, at 24 (June, 1999).

⁵⁰ See David A. Harris, *The Stories, Statistics, and the Law: Why "Driving While Black" Matters*, 84 Minn. L. Rev. 265, 289 (1999).

⁵¹ See id. at 268.

⁵² See id. at 269.

⁵³ See Rebecca Porter, *Skin Deep: Minorities Seek Relief from Racial Profiling*, 35 Trial 13, 14 (1999).

⁵⁴ See David A. Harris, *The Stories, Statistics, and the Law: Why "Driving While Black" Matters*, 84 Minn. L. Rev. 265, 271 (1999).

⁵⁵ See David A. Harris, *The Stories, Statistics, and the Law: Why "Driving While Black" Matters*, 84 Minn. L. Rev. 265, 272 (1999).

⁵⁶ See id.

⁵⁷ See David A. Harris, *The Stories, Statistics, and the Law: Why "Driving While Black" Matters*, 84 Minn. L. Rev. 265 (1999).

⁵⁸ See id. at 274.

⁵⁹ See id.

⁶⁰ See id.

⁶¹ See David A. Harris, *Driving While Black: Racial Profiling on Our Nations Highways*, American Civil Liberties Union, Special Report, at 26 (June, 1999).

⁶² See Wesley MacNeil Oliver, *With an Evil Eye and an Unequal Hand: Pretextual Stops and Doctrinal Remedies to Racial Profiling*, 74 Tulane L. Rev. 1409, 1451 (2000).

⁶³ See David A. Sklansky, *Traffic Stops, Minority Motorists and the Future of the Fourth Amendment*, 1997 Sup. Ct. Rev. 271, 325 (1997).

⁶⁴ See id. at 306.

⁶⁵ See David A. Harris, *"Driving While Black" and all Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops*, 87 J. of Crim. L. and Criminology 544, 552 (1997).

⁶⁶ See Wesley MacNeil Oliver, *With an Evil Eye and an Unequal Hand: Pretextual Stops and Doctrinal Remedies to Racial Profiling*, 74 Tulane L. Rev. 1409, 1458 (2000).

⁶⁷ See David A. Sklansky, *Traffic Stops, Minority Motorists and the Future of the Fourth Amendment*, 1997 Sup. Ct. Rev. 271, 328 (1997).

⁶⁸ See id.

⁶⁹ See Wesley MacNeil Oliver, *With an Evil Eye and an Unequal Hand: Pretextual Stops and Doctrinal Remedies to Racial Profiling*, 74 Tulane L. Rev. 1409, 1433 (2000).

⁷⁰ See id. at 1434.

⁷¹ See generally Wesley MacNeil Oliver, *With an Evil Eye and an Unequal Hand: Pretextual Stops and Doctrinal Remedies to Racial Profiling*, 74 Tulane L. Rev. 1409, 1415 (2000).

⁷² See *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁷³ See Adrian J. Barrio, Note, *Rethinking Schneckloth v. Bustamonte: Incorporating Obedience Theory into the Supreme Courts Conception of Voluntary Consent*, 1997 U. Ill. L. Rev. 215, 233 (1997).

⁷⁴ See Wesley MacNeil Oliver, *With an Evil Eye and an Unequal Hand: Pretextual Stops and Doctrinal Remedies to Racial Profiling*, 74 Tulane L. Rev. 1409, 1462 (2000).

⁷⁵ See *id.* at 1415.

⁷⁶ See Lisa Water, *Eradicating Racial Stereotyping from Terry Stops: The Case for an Equal Protection Exclusionary Rule*, 71 U. Colo. L. Rev. 255, 257 (2000).

⁷⁷ See Wesley MacNeil Oliver, *With an Evil Eye and an Unequal Hand: Pretextual Stops and Doctrinal Remedies to Racial Profiling*, 74 Tulane L. Rev. 1409, 1481 (2000).